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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 FEDERAL TRADE COMMISSION,

9 Plaintiff,

10 v.

11 CYBERSPACE.COM, LLC, *et al.*,

12 Defendants.

No. C00-1806L

ORDER GRANTING PLAINTIFF'S
MOTION TO DEPOSIT FUNDS INTO
THE REGISTRY OF THE COURT

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14 This matter comes before the Court on "Plaintiff's Motion Pursuant to Rule 67" to
15 deposit the redress funds that the FTC has received in this case into an interest-bearing account
16 in the Court's registry. Defendants do not oppose the FTC's request that the funds be placed in
17 the registry of the Court. They do, however, object to the amount of money the FTC intends to
18 spend to send notice about this litigation to injured consumers, as required by this Court's Order
19 of April 18, 2005. Dkt. # 291. Defendants also object to the use of the redress funds to pay for
20 the required notice in light of the pending Ninth Circuit appeal: defendants do not want the
21 amount of money in the redress fund reduced in any way as long as there is a possibility that
22 they might win on appeal and have the funds returned to them.

23 Having reviewed the memoranda, declarations, and exhibits submitted by the
24 parties, the Court finds as follows:

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1 (1) The FTC's unopposed motion to deposit of the redress funds into an interest bearing
2 account in the registry of the Court is GRANTED. The FTC shall, within ten days of the date of
3 this Order, deposit all sums paid by defendants (for a total of \$2,847,168.03) into the registry of
4 the Court.

5 (2) In the Order Regarding Amount of Consumer Injury and Disbursement of Funds (Dkt.
6 # 245 at 8), the Court specifically found that the costs of contacting injured consumers and
7 distributing funds shall be paid out of the redress fund. None of the parties has obtained a stay
8 of the underlying judgment pending appeal and defendants have not identified any legal theory
9 that would preclude the use of the redress funds as directed in the Court's Order. Since
10 judgment was entered against them, defendants have taken inconsistent positions regarding the
11 restitution process: they have alternately attempted to stay the portions of the redress order they
12 do not like (such as the payment provisions) while seeking to enforce the portions that may
13 ultimately benefit them (such as the contact provisions).

14 Having insisted that the FTC move forward with its efforts to contact injured
15 consumers, defendants cannot avoid the funding mechanisms established in the redress order.
16 All costs associated with the initial notice to the injured consumers informing them of this
17 litigation and the possibility of redress, advising them that the matter is still on appeal,
18 requesting that they let the FTC know about any change of address or contact information during
19 the next two years, and transmitting or requesting any other information the FTC deems helpful
20 or necessary will be paid out of the redress funds following their deposit into the registry of the
21 Court. The FTC shall comply with the notice requirements set forth in the Court's April 18th
22 order within thirty days of the date of this Order. Once a disbursement is made pursuant to the
23 terms of paragraph (3) below, any refund that may be necessary following appeal will be
24 reduced by the reasonable amounts expended by the FTC during the redress process.

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1 (3) Pursuant to 28 U.S.C. §§ 2041 and 2042, money held in the registry of the Court will
2 be disbursed only by order of the Court. When making a request for disbursement, the FTC
3 shall provide supporting documentation sufficient to establish the need for and reasonableness of
4 the request. The Declaration of Jeanne M. Crouse (Dkt. # 293) would not be sufficient if
5 offered for that purpose. Besides its failure to specify a particular amount for disbursement, the
6 declaration does not set forth the services/products to be purchased or whether the costs were
7 determined through a competitive bidding process, past experience, an in-house vendor, etc. In
8 addition, Ms. Crouse's cost estimates appear to be hearsay: future requests for disbursement
9 must be supported by admissible evidence regarding the services rendered and the costs thereof.

10 (4) In order to give defendants and the Court an opportunity to evaluate the
11 reasonableness of future disbursement requests, the FTC shall file and serve requests for
12 disbursement of funds from the registry of the Court pursuant to Local Civil Rule 7(d)(2). The
13 request shall be noted on the Court's calendar for consideration no earlier than the seventh
14 judicial day after filing. Defendants shall file and serve any challenge to the reasonableness of
15 the request no later than three judicial days before the noting date, with plaintiff's reply due on
16 the noting date.

17 DATED this 16th day of June, 2005.

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20 Robert S. Lasnik
21 United States District Judge
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